REMARKS

1. *Status of Claims*

Claims 1-8, 10-17, 19-21, 23-42, and 45-49 are pending and under consideration.

2. *Claim Amendments*

Claim 28 has been amended to correct an inadvertent spelling error of the word naphthalate. No new matter has been introduced by this claim amendment.

3. *Claim Rejections under 35 U.S.C. §103(a)*

The Examiner has rejected claims 1-8, 10-17, 19-21, 23-31, 34-42, and 45-49 under 35 U.S.C. §103(a) as being unpatentable over Cyr ct al., U.S. Pat. No. 6,455,620 ("Cyr"). The Applicants respectfully traverse this rejection.

First, the Applicants respectfully submit that Cyr requires the presence of a polyether, specifically, a substituted or unsubstituted poly(alkylene glycol), as the oxidizable component in the oxygen scavenging system. Cyr states that the invention "relates to oxygen scavenging systems comprising an oxidation catalyst and at least one polyether" (column 2, lines 49-51) and further states that the "first component of the oxygen scavenging systems of the present invention is at least one polyether" (column 3, lines 16-17).

Independent claims 1, 14, 36, and 40 of the present application each stipulate that the "oxygen barrier composition [or layer], comprising: an oxygen barrier polymer, an oxygen scavenging polymer, a photoinitiator, and an oxidation catalyst, wherein the oxygen barrier polymer is selected from poly(ethylene/vinyl alcohol) (EVOH), polyacrylonitrile (PAN), copolymers comprising acrylonitrile, or poly(vinylidene dichloride) (PVDC); and the oxygen scavenging polymer is a polyamide oligomer or polymer derived at least in part from a xylylene diamine-based monomer." The Applicants' invention does not feature the presence of a polyether

component, nor does the invention employ a polyether as the oxygen scavenging component as in Cyr; thus, the present claims are distinct from Cyr.

Second, the Applicants respectfully disagree with the Examiner's conclusion that "the applicants' and patentees' oxygen scavenger are both xylylene diamine based polyamides." See Office Action dated December 14, 2004, page 3.

The Applicants respectfully submit that Cyr does not utilize the polyamide as the oxygen scavenging component as alleged by the Examiner. In fact, Cyr clearly discloses that the oxygen scavenging component is a polyether - abstract, column 2, lines 49-51, column 3, line 16, bridging column 4, line 49, and the examples. While Cyr discloses that a polyamide thermoplastic polymer may be present in the compositions, one skilled in the art would recognize that the broad classes of thermoplastic polymers identified at column 5, lines 1-13, and the individual thermoplastic polymers identified throughout the disclosure at column 5, line 16, to column 7, line 19, are provided as an additional structural component to the oxygen scavenging compositions and not as potential oxygen scavengers. Additionally, within this class of polyamide thermoplastic polymers, the patent specification teaches that there are preferred partially aromatic polyamides and preferred aliphatic polyamides and indicates that "[p]artially aromatic polyamides, are preferred over aliphatic polyamides where good thermal properties are crucial." See column 7, lines 17-19. The specification does not mention a thermoplastic polymer selection criteria based upon oxygen scavenging properties. Furthermore, Cyr's independent claims 1, 31, 32 each stipulate that the compositions comprise "a thermoplastic polymer and an oxygen scavenging composition." This indicates that the thermoplastic polymer and the oxygen scavenging composition are separate and distinct components and serve separate and distinct functions within Cyr's invention.

Accordingly, one skilled in the art would recognize that 1) Cyr's oxygen scavenger is the polyether and not the optional thermoplastic polymer (polyamide) and 2) that Cyr's thermoplastic polymer disclosure does not provide a list of oxygen scavenging polymers but instead provides a list of thermoplastic polymers that serve a separate function, e.g. providing structure to the finished article. Therefore, the Applicants respectfully submit that Cyr does not teach or suggest

all the limitations of the currently pending claims. Applicants respectfully request that this ground for rejection be withdrawn.

4. Final Remarks

In conclusion, the Applicants respectfully submit that Cyr requires the presence of non-required element of the present claims, a polyether, and that the polyether is the oxygen scavenging component of Cyr's oxygen scavenging system while the Applicants' "oxygen scavenging polymer is a polyamide oligomer or polymer derived at least in part from a xylylene diamine-based monomer." The Applicants submit that the pending claims, Claims 1-8, 10-17, 19-21, 23-42, and 45-49, are in condition for allowance. The Examiner is invited to contact the undersigned patent attorney at (832) 813-4339 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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CHEVRON PHILLIPS CHEMICAL CO. LP
10001 Six Pines Drive
The Woodlands, Texas 77380
Phone: (832) 813-4339
Fax: (832) 813-6060

K. KaRan Reed
Registration No. 45,036
ATTORNEY FOR APPLICANTS